

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TQ DELTA LLC, :  
: Plaintiff, :  
: v. : Civil Action No. 13-2013-RGA  
: ZYXEL COMMUNICATIONS INC., :  
et al., : Defendants. :

**ORDER**

Plaintiff has filed a motion to dismiss the breach of contract and declaratory judgment counterclaims of the defendants. (D.I. 26).

On the breach of contract claims, Defendants sufficiently allege that they are the third-party beneficiaries of a contract between Plaintiff and a standards-setting body, that Plaintiff breached the contract by – at a minimum – not engaging in good faith<sup>1</sup> negotiations over a license before suing the Defendants, and that Defendants have been harmed. Thus, the motion to dismiss the contract claims is denied.

On the declaratory judgment claims, I do not believe that I have subject matter jurisdiction, essentially for the reasons explained in *Interdigital v. ZTE*, No. 13-09-RGA, D.I. 269, pp. 3-6 (D.Del. May 28, 2014). Thus, the motion to dismiss the declaratory judgment claims is granted.

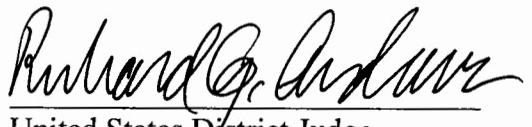
For the reasons stated, then, the motion to dismiss (D.I. 26) is **GRANTED IN PART**

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<sup>1</sup> One of the facts alleged (by both sides) is that an ultimatum was presented by Plaintiff to Defendants on Monday, November 25, 2013, with a decision demanded by Friday (*i.e.*, the Friday after Thanksgiving), November 29, 2013. (*See, e.g.*, D.I. 18, p.5, ¶10). A jury could reasonably conclude that this was a bad faith demand.

**AND DENIED IN PART.**

IT IS SO ORDERED this 8<sup>th</sup> day of July 2014.

  
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United States District Judge